

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-123016-10
Date:
October 13, 2010

Re:

Legend:

Donor

Spouse

Child 1

Child 2

Date 1

Date 2

Year 1

Year 2

Year 3

Year 4

Year 5

Year 6

Year 7

Trust 1

Trust 2

Law Firm

Accounting Firm

Dear :

This letter responds to the letter dated May 27, 2010, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the

Procedure and Administration Regulations to elect out of the automatic allocation of generation-skipping transfer (GST) tax under § 2632(c)(5)(A)(i).

The facts and representations submitted are summarized as follows: On Date 1, Donor created Trust 1, an irrevocable trust, for the benefit of Donor's spouse (Spouse), Child 1, Child 2, and the issue of Child 1 and Child 2. In addition, Trust 1 provided each beneficiary with withdrawal rights. In Years 1-7, Donor transferred cash to Trust 1 and informed Law Firm of these transfers.

On Date 2, Donor created Trust 2, an irrevocable trust, for the benefit of Donor's Spouse, Child 1, Child 2, and the issue of Child 1 and Child 2. In addition, Trust 2 provided each beneficiary with withdrawal rights. In Years 6 and 7, Donor transferred cash to Trust 2 and informed Law Firm of these transfers.

Donor relied on Law Firm and Accounting Firm to coordinate preparation and review of his Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns to report his transfers to Trust 1 and Trust 2 and to assist Donor in filing those Forms 709. Donor filed a Year 1 Form 709 to report his Year 1 transfer to Trust 1. In preparing the Year 1 Form 709, Accounting Firm failed to make a proper written election out of the automatic allocation of the GST exemption under § 2632(c)(5)(A)(i) for the entire amount of Donor's Year 1 transfers to Trust 1. Law Firm failed to inform Accounting Firm about Donor's transfers to Trust 1 in Years 2-7 and Donor's transfers to Trust 2 in Years 6 and 7. Accounting Firm did not prepare Forms 709 to report those transfers.

Donor requests an extension of time under § 301.9100-3 to elect out of the automatic allocation of the GST exemption under § 2632(c)(5)(A)(i) for the entire amount of the Years 1-7 transfers to Trust 1.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a "transferor" to a "skip person." A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess (if any) of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction,

the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect for Years 1-2, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(a), as in effect for Years 3-7, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed. Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as determined in § 2632(c)(3)(B)(i).

Section 2632(c)(5)(A)(i) provides that an individual may elect to have the automatic allocation rules of § 2632(c)(1) not apply to an indirect skip, or any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that the election may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) provides that in the case of an indirect skip made after December 31, 2000, to which § 2642(f) (relating to transfers subject to the estate tax inclusion period (ETIP)) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). This automatic allocation is effective

whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in

§ 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(iv), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Donor is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation of the GST exemption under § 2632(c)(5)(A)(i) for the entire amount of the Years 1-7 transfers to Trust 1. Donor's GST exemption is automatically allocated under § 2632(c)(1) to the entire amount of his transfers to Trust 2 in Years 6 and 7.

The elections should be made on supplemental Form 709 for the Year 1 transfer to Trust 1 and on original Forms 709 for the Years 2-7 transfers to Trust 1 and filed with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to each of the Supplemental Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. See § 26.2632-1(a)(5), Example 5, regarding the identity of the transferor in the case of the lapse of a withdrawal power. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By:

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes
Copy of this letter

cc: